

STATE OF NEW JERSEY v MARVIN MATHIS -- February 29, 2008

SHEET 1

SUPERIOR COURT OF NEW JERSEY  
UNION COUNTY  
LAW DIVISION, CRIMINAL PART  
INDICTMENT NO. 97-02-0123  
APP. DIV. NO. A-3695-07T4

STATE OF NEW JERSEY,	)	
	)	
Plaintiff,	)	TRANSCRIPT
	)	of
vs.	)	PCR MOTION
	)	
MARVIN MATHIS,	)	
	)	
Defendant.	)	

Place: Union Co. Courthouse  
2 Broad Street  
Elizabeth, NJ 07207

Date: February 29, 2008

BEFORE:

HONORABLE JOHN F. MALONE, J.S.C.

TRANSCRIPT ORDERED BY:

HELEN C. GODBY, ESQ. (Office of the Public  
Defender, Appellate Section, 9th Floor,  
31 Clinton Street, Box 46003, Newark,  
New Jersey 07101)

APPEARANCES:

SARA B. LIEBMAN, ESQ.  
(Assistant Prosecutor, Union County)  
Attorney for the State

LEWIS D. THOMPSON, ESQ. (Sole Practitioner)  
Attorney for the Defendant

Transcriber Lauren Torkos  
ELITE TRANSCRIPTS, INC.  
14 Boonton Avenue  
Butler, New Jersey 07405  
(973) 283-0196  
Audio Recorded  
Operator, \_\_\_\_\_

**ELITE TRANSCRIPTS, INC.**

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v MARVIN MATHIS -- February 29, 2008

SHEET 2

2

I N D E X

PAGE

RE: MOTION:

ARGUMENT BY:

Mr. Thompson 5, 7

Ms. Liebman 5

THE COURT:

Decision 7

Colloquy

3

1 THE COURT: Good afternoon, everyone. Thank  
2 you. You can be seated. All right. This is the  
3 matter of STATE VS. MARVIN MATHIS. It is under  
4 Indictment 97-02-123. It is the PCR. Counsels, your  
5 appearance for the record please.

6 MR. THOMPSON: Lewis Thompson appearing for  
7 Marvin Mathis, who's present on writ from New Jersey  
8 State Prison, Your Honor.

9 MS. LIEBMAN: Sara Liebman for the State.

10 THE COURT: Just very briefly before we  
11 begin. Let me indicate that this is -- this case  
12 arises out of a homicide which occurred on January the  
13 22nd, 1996 in Elizabeth. The defendant, Mr. Mathis,  
14 was aged 15 at the time that he was arrested on a  
15 juvenile complaint charged with participation in that  
16 crime.

17 Following his arrest a hearing was held in  
18 Family Court at which time the State's motion to waive  
19 jurisdiction to the adult court was granted.  
20 Thereafter the Union County Grand Jury indicted Mr.  
21 Mathis. That indictment was handed down on February  
22 the 4th, 1997. And under this indictment number Mr.  
23 Mathis was charged with first-degree murder, first-  
24 degree armed robbery, first-degree felony murder,  
25 second-degree possession of a firearm for unlawful

ELITE TRANSCRIPTS, INC.

14 Boonton Avenue, Butler, New Jersey 07405

973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v MARVIN MATHIS -- February 29, 2008

SHEET 3

## Colloquy

4

1 purposes, and third-degree possession of a weapon for  
2 unlawful purpose.

3 The defendant through counsel filed a motion  
4 for a MIRANDA hearing in connection with this matter.  
5 That hearing was conducted prior to the trial and the  
6 motion to suppress his statement was denied. The trial  
7 followed and the Jury returned a verdict of guilty on  
8 all counts on June 18, 1998. Sentencing took place on  
9 August the 14th of 1998 and the defendant received a  
10 cumulative sentence of 50 years to New Jersey State  
11 Prison with 30 years of parole ineligibility.

12 Defendant filed an appeal which was decided  
13 by the Appellate Decision on June 2, 2000. And the  
14 defendant's conviction and sentence were affirmed.  
15 Defendant then brought this post-conviction relief  
16 petition in which he argues that the decision in the  
17 Family Court to waive jurisdiction and transfer the  
18 matter to adult court was erroneous, that the failure  
19 to suppress his statement on the MIRANDA motion that  
20 was erroneous, and that the sentence that was imposed  
21 was illegal. The defendant also argues ineffective  
22 assistance of counsel in connection with his PCR.

23 I have reviewed all of the papers that have  
24 been submitted in connection with this matter. But,  
25 Mr. Thompson, I'll hear you for anything you want to

## Colloquy

5

1 add or highlight.

2 MR. THOMPSON: Okay. Thank you, Your Honor.  
3 I'm not going to go through all the details. You've  
4 read the briefs. The essence here is that Mr. Mathis  
5 has had a long history of cognitive difficulties,  
6 inability to understand complex concepts, and problems  
7 with school. And these were well documented by Dr.  
8 Paige (phonetic), Dr. Thompson (phonetic), Dr.  
9 Schlessinger (phonetic).

10 And this is not so much a direct challenge to  
11 the waiver, but rather a challenge to the effectiveness  
12 of the counsel that he had at the time who's now  
13 deceased. Inasmuch as trial counsel didn't perceive  
14 when he should have the difficulties that this man, Mr.  
15 Mathis, was going to have in understanding the charges  
16 against him, and understanding the questions asked of  
17 him, and understanding the plea offer, and  
18 understanding the proceedings in general.

19 And trial counsel should have basically put  
20 forth a defense of inability to stand trial for lack of  
21 competence, but this wasn't done, Your Honor. As such  
22 this was ineffective to the level of STRICKLAND and the  
23 other cases. And we ask that post-conviction relief be  
24 granted on this basis, Your Honor.

25 THE COURT: Thank you. Ms. Liebman.

ELITE TRANSCRIPTS, INC.

14 Boonton Avenue, Butler, New Jersey 07405

973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v MARVIN MATHIS -- February 29, 2008

SHEET 4

Argument - Thompson/Liebman

6

1 MS. LIEBMAN: Thank you, Your Honor. As  
 2 noted in the State's papers many of defendant's claims  
 3 are procedurally barred and that they have already been  
 4 addressed by the Appellate Division. And even so --  
 5 even if this Court were to consider them they lack  
 6 merit.

7 With regard to the issue of the defendant's  
 8 competence or whether he had a defense of diminished  
 9 capacity, again in addition to what's in the State's  
 10 papers, I would just like to point out that the  
 11 defendant himself submitted numerous briefs and his  
 12 petition for post-conviction relief. And reading that  
 13 it is clear that he has a competent grasp on what is at  
 14 issue and even the issues that are involved in this  
 15 post-conviction relief.

16 And I know that the issue is what his mental  
 17 state was at the time. But I think that Your Honor can  
 18 look to that taken in connection with the rest of the  
 19 factors. And the fact that the doctor's reports --  
 20 there is no -- there was no conclusive medical  
 21 statement that he was not competent or that he had a  
 22 viable defense of diminished capacity.

23 Under the standard of STRICKLAND, which has  
 24 been adopted by New Jersey under STATE VS. FRISK  
 25 (phonetic), the State submits that for these reasons,

Argument - Liebman

7

1 the reasons in the State's papers, that the defendant  
 2 has not met his burden to entitle him to post-  
 3 conviction relief. And the State respectfully requests  
 4 that Your Honor deny his petition on the papers without  
 5 any further hearing.

6 MR. THOMPSON: Your Honor, Dr. Thompson in  
 7 her own report stated that he should have a subsequent  
 8 evaluation, a psychiatric evaluation, to determine his  
 9 level of retardation and competence. That was not  
 10 done.

11 Second of all, Mr. Mathis' functioning level  
 12 due to maturation and additional training and education  
 13 now is certainly more than when he was 15 years and 10  
 14 months. And as a result saying well, he assisted in  
 15 preparing these briefs now means that he was competent  
 16 you know 12 years ago. And that's not necessarily the  
 17 case, Your Honor.

18 THE COURT: As I indicated in my brief  
 19 outline this post-conviction relief petition really is  
 20 in two parts. The comments of counsel today really  
 21 addressed the second part. That being the ineffective  
 22 assistance aspect of the case. But there is the  
 23 element of the petition that really makes a primary or  
 24 direct attack upon some of the aspects of the case, and  
 25 it is important just for completeness to address those

ELITE TRANSCRIPTS, INC.

14 Boonton Avenue, Butler, New Jersey 07405  
 973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v MARVIN MATHIS -- February 29, 2008

SHEET 5

## Argument - Liebman/Thompson/Court Decision

8

1 issues.

2 The matters of the waiver by the Family Court  
3 to adult court and the matter of the legality of the  
4 sentence were both addressed in the -- by the Appellate  
5 Division in its 2000 decision. And under Rule 3:22-5  
6 the relitigation or the attempt to relitigate those  
7 issues in a post-conviction relief petition are barred.

8 The matter of the -- whether the Trial Court  
9 was correct or not in refusing to suppress the  
10 statement under MIRANDA is an issue that could have  
11 been raised on appeal. And Rule 3:22-4 would bar then  
12 consideration of it here in a PCR. But putting even  
13 aside the procedural bar it is clear from a review of  
14 the record in this matter that the Court did conduct a  
15 thorough MIRANDA hearing, evidence.

16 With respect to the procedures employed and  
17 the manner in which the statement was taken from Mr.  
18 Mathis, the fact that his mother was present with him  
19 when he was interviewed by the police, all of those  
20 factors led to the Court's determination prior to trial  
21 that the statement should not be suppressed.

22 And upon review of the record with respect to  
23 the matter of the MIRANDA hearing the record is such  
24 that it supports the conclusion that the statement was  
25 knowingly and voluntarily -- that the rights under

## Court Decision

9

1 MIRANDA were knowingly and voluntarily waived, and the  
2 statement was given in a voluntary fashion.

3 Turning now to the claim of ineffective  
4 assistance of counsel. Both the attorneys here today  
5 have made reference to the STRICKLAND standards, which  
6 indicate that in order for a reviewing court on a PCR  
7 to conclude that there was ineffective assistance of  
8 counsel, the Court must conclude that counsel failed to  
9 act as the attorney on behalf of the defendant. That  
10 in a proficient manner that his conduct was so  
11 deficient as to effectively fail to provide the counsel  
12 that the Sixth Amendment guarantees.

13 The second part of this test is -- and that  
14 based upon that -- but for that deficient conduct of  
15 counsel the results would have been different. The  
16 defendant asserts that the ineffective assistance of  
17 his counsel deals with the fact that counsel did not  
18 raise, either during the MIRANDA proceeding or at the  
19 time of sentencing, his mental status.

20 It is argued that the defendant, a special  
21 ed. student at the time of his arrest suffered from  
22 learning disabilities and that therefore, his  
23 competency to stand trial, his competency to have made  
24 a voluntary statement was lacking, and that he lacked -  
25 - that his capacity to formulate the necessary mental

ELITE TRANSCRIPTS, INC.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v MARVIN MATHIS -- February 29, 2008

SHEET 6

## Court Decision

10

1 status necessary to convict him of these crimes was  
2 lacking.

3 So the question then before the Court is was  
4 that failure -- was there a failure on the part of  
5 counsel to raise these issues. Information has been  
6 presented to the Court eluded to by counsel here in the  
7 argument, the psychological reports that have been  
8 presented to the Court here in connection with this  
9 matter.

10 Based upon my review of those reports it is  
11 clear to me that they -- while the evidence does  
12 support the conclusion that Mr. Mathis had learning  
13 disabilities, that his -- that he -- his learning  
14 capacity was as -- I believe it is indicated at a  
15 borderline level. There's also no information  
16 contained in these reports that supports a conclusion  
17 that he was suffering any psychiatric illness.

18 There is nothing here that says he lacked  
19 competence. That is that he did not understand and  
20 appreciate the nature of the charges against him.  
21 There is nothing that supports the conclusion that he  
22 had a diminished capacity. That is he did not have the  
23 capacity to formulate the ability to act in a  
24 purposeful or knowing way.

25 The review of the proceedings indicates that

## Court Decision

11

1 he participated in the interview with the police and  
2 the time he gave his statement -- again in the presence  
3 of his -- of a parent. He voluntarily waived his  
4 rights. It is apparent that he understood the  
5 proceedings, that he understood the questions being  
6 posed to him, and was able to formulate answers to  
7 those questions that were appropriate and responsive to  
8 the questions before him.

9 There is nothing that allows this Court to  
10 conclude that the evidence supports a conclusion that  
11 the defendant at the time of his trial was incompetent  
12 or suffered from diminished capacity. Thus any failure  
13 on the part of his attorney to raise those issues,  
14 either in connection with the MIRANDA or at the time of  
15 sentencing to mitigate -- as a mitigating factor or to  
16 raise as a bar to the prosecution of this case that any  
17 failure of counsel to do that was ineffective  
18 assistance. There simply was nothing to present to the  
19 Court to argue that the defendant lacked competency or  
20 that he suffered diminished capacity.

21 The first prong then of STRICKLAND has not  
22 been satisfied. There is no showing that counsel  
23 failed to provide legal service -- legal assistance as  
24 is required by the Constitution.

25 Secondly, there is no indication with respect

ELITE TRANSCRIPTS, INC.

14 Boonton Avenue, Butler, New Jersey 07405

973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v MARVIN MATHIS -- February 29, 2008

SHEET 7

Court Decision

12

1 to the trial that the results would have been different  
2 but for any deficiencies on the part of counsel. The  
3 evidence against the defendant in this case, absent his  
4 own statement, was still substantial, overwhelming, and  
5 easily support a conclusion that the defendant was  
6 guilty beyond a reasonable doubt.

7 Two eye witnesses to the crime, albeit  
8 persons who themselves were participants in the crime  
9 that is part of the group that was out for purposes of  
10 committing a robbery, nevertheless those two women did  
11 testify and identify the defendant as the person who  
12 was the shooter, the person who inflicted the fatal  
13 gunshot. The evidence was substantial.

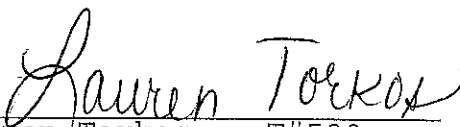
14 There is simply no basis for this Court to  
15 conclude that an evidentiary hearing is necessary.  
16 There is no -- been no sufficient demonstration of  
17 ineffective assistance of counsel to warrant any  
18 further proceedings in this matter. The petition is  
19 denied. Thank you, Counsel.

20 MS. LIEBMAN: Thank you, Your Honor.  
21 (Proceedings concluded)

13

CERTIFICATION

I, Lauren Torkos, the assigned transcriber,  
do hereby certify the foregoing transcript of  
proceedings in the Union County Superior Court on  
February 29, 2008, Tape No. 51-08, Index No. 34 to  
1011, is prepared in full compliance with the current  
Transcript Format for Judicial Proceedings and is a  
true and accurate compressed transcript of the  
proceedings as recorded to the best of my knowledge and  
ability.

  
Lauren Torkos T#580  
Elite Transcripts, Inc.  
Butler, New Jersey 07405

January 5, 2009

ELITE TRANSCRIPTS, INC.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927